

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OM INDUSTRIAL PRODUCTS
CORPORATION

Plaintiff,

v.

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY

Defendant.

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CIVIL ACTION NO. 4:19-cv-3896

NOTICE OF REMOVAL

Defendant Nationwide Property and Casualty Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *OM Industrial Products Corporation v. Nationwide Property and Casualty Insurance Company*; Cause No. 2019-67794; In the 215th Judicial District of Harris County, Texas.

**I.
BACKGROUND**

Plaintiff OM Industrial Products Corporation (hereinafter “Plaintiff”) initiated the present action by filing its Original Petition in Cause No. 2019-67794; In the 215th Judicial District of Harris County, Texas on September 18, 2019 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

1. Defendant appeared and answered on September 27, 2019, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

2. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**. Pursuant to Local Rule 81(2) all pleadings and answers thereto filed in the State Court Action are attached as **Exhibits A and B**. Pursuant to Southern District of Texas Local Rule 81(4), a copy of the State Court Action docket sheet is attached as **Exhibit C**. Pursuant to Local Rule 81(1) all executed process in the case are attached as **Exhibit D**.

3. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through its attorney of record, and to the clerk of the 215th Judicial District Court of Harris County, Texas.

4. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

6. Plaintiff is domiciled in Harris County, Texas. *See Exhibit A, ¶ 2*. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

7. Nationwide Property and Casualty Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide is a citizen of the State of Ohio.

8. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

9. Plaintiff's Original Petition states that Plaintiff seeks "over \$200,000 but not more than \$1,000,000 dollars." *See* Plaintiff's Original Petition, **Exhibit A**, ¶ 18. Further, Plaintiff claims that "Nationwide has breached contract of insurance and Nationwide owes actual damages of \$155,988.46, plus a reasonable attorney fee" *See id.* at ¶ 29. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff's Original Petition.

10. Plaintiff further seeks compensation for (1) actual damages, (2) indirect consequential damages, (3) mental anguish, (4) court costs, (5) attorney's fees, (6) penalties, and (7) exemplary damages. *See Exhibit A*, ¶¶ 74-81. Plaintiff has alleged that Defendant's conduct was wrongful and done knowingly, entitling it to a trebling of actual damages under Texas Deceptive Trade Practices Act and Insurance Code. *See Exhibit A*, ¶¶ 77-78; Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.¹

11. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

¹ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

**III.
CONCLUSION**

12. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

13. WHEREFORE, Defendant Nationwide Property and Casualty Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served via CMRRR this the 8th day of October, 2019 to:

Javier Delgado, Esq.
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/s/ Patrick M. Kemp

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